REWRITING THE INTERNATIONAL LAWS OF SEIZURE

WILL THE BRITISH ABANDON PRECEDENT IN WILHELMINA CASE?

STATUS OF SEIZED STEAMER AND HER CARGO GRAVE INTERNATIONAL ISSUE.

By KENT STILES.

A NEWSPAPER man balanced himself at the rail of a seagoing tugboat and viewed with chagrin and disappointment the colorless departure through the gateway of New York Harbor of the freight steamship Wilhelmina, on the evening of January 22, for Hamburg, Germany. His employers, an enterprising morning journal of the metropolis which the freighter was now leaving astern, had chartered the tug for $150 and had assigned him to what might have been the very biggest story of his experience.

The British cruiser Lancaster, dimly discernible through dusk and snowfall, could make his story possible by intercepting the outgoing vessel at a point beyond the three-mile neutrality zone, and there seizing her as a prize of war; but either by design or through her commander's ignorance of the character of the Wilhelmina's cargo, the cruiser took no official notice of the freighter's passing. So the reporter in disgust ordered the tug about and returned to his office and wrote thirty lines. It cost his paper $5 a line for something which was scarcely news at all!

Stored in the hold of the Wilhelmina was a $200,000 cargo of provisions—contraband under certain conditions defined by international law and practice, as recognized and honored by Great Britain among other nations during recent wars before the present one in Europe. The charterers of this vessel denied through counsel in New York that the object of her dispatch was to establish and define England's present day attitude toward a rule which she in previous international conflicts herself aided in framing.

Press dispatches sent out from Washington on February 2 said that American Ambassador Page at London had informed the State Department at Washington that the British government had ordered its warships to regard as subject to seizure and confiscation such cargoes as that which the Wilhelmina carried—and without compensation except in the Wilhelmina's case. The British Foreign Office in a statement two days later denied this, explaining that

"no decision has yet been taken to depart from previously existing rules or practice."

The British Foreign Office realized that to undertake the enforcement of a step so drastic and extreme was nothing less than an endeavor by England to lay down a new doctrine for neutral nations to accept arbitrarily.

By confiscating these cargoes—and for such confiscation there is no precedent which is sustained by international law or custom—England reverses her own position, made clear through her diplomatic correspondence during the Russo-Japanese and Boer wars, on the question of the right of exporters in a neutral country to send food to non-combatants in a belligerent country.

The departure of the Wilhelmina concerned the United States government and its relations with Great Britain, because it was the first attempt during six months of the world war to export American food in an American owned ship under an American flag and consigned by an American commission house for consumption, not by the German government or its armed forces, but by women and children and the men who are non-combatants in Germany.

THE RIGHT TO FEED A BELLIGERENT'S NON-COMBATANTS.

The principle involved, from the point of view of the American merchant, is his right to supply the civilian population of Germany with food. The exercise of this privilege—to send to a belligerent food not intended for military usages—has heretofore never been forbidden to neutral countries in time of war. Withhold this privilege now from the exporters of the United States and other neutral powers, and virtually everything—the lack of which increases the distress of the civil population of Germany—becomes absolute contraband of war. Almost the entire trade of neutrals with Germany is thus destroyed, and as long as the Allies rule the seas the barbaric habits of feudal times, when fortified towns were starved, is extended to affect Germany's entire population.

Instances are not wanting of Great Britain's insistence on the right of neutrals to send into belligerent territory conditional contraband such as the Wilhelmina carried from New York. In March, 1904, a journal in St. Petersburg (now Petrograd) published instructions which had been issued to the commanders of Russian men-o'-war extending absolute contraband to include all kinds of grain consigned to Japan and Japanese armed forces. In June, 1904, the British Foreign Secretary, Lord Lansdowne, advised Sir C. Hardinge, British Ambassador at St. Petersburg, that Great Britain observed

"with great concern that rice and provisions will be treated as unconditional contraband, a step they regard as inconsistent with the law and practice of nations."

Lord Lansdowne said that the British government did not contest

"that in particular circumstances provisions may acquire a contraband character, as, for instance, if they should be consigned direct to the army or fleet or to a port where such a fleet may be lying,"

but that Great Britain could not admit

"that if such provisions were consigned to a port of a belligerent (even though it should be a port of naval equipment) they should therefore be necessarily regarded as contraband of war."

In applying Lord Lansdowne's reasoning to cargoes such as the Wilhelmina's, it should be noted that the charterers of this vessel filed with the United States customs authorities in New York an affidavit that her cargo was not consigned to the German army or fleet. And Count von Bernstorff, the German Ambassador to the United States, late in January guaranteed that this ship's cargo would not reach his government nor its agents or contractors nor its military or naval forces. Moreover, the ambassador virtually assured the American government that the German Federal Council's decree confiscating all grain and flour to conserve the nation's food ssupply had been modified to exempt such cargoes as the Wilhelmina's; and the German government subsequently confirmed the ambassador's statement. As a matter of fact, it is asserted by persons who have been permitted to read the text of the Federal Council's decree at the State Department in Washington that the document contains no mention of any foodstuffs except grain and flour as being confiscable. As for the Wilhelmina, she sailed with a cargo only 15 per cent grain and flour, her remaining foodstuffs therefore not affected by the decree, even if the latter was not modified.

In consequence of England's complaint to Russia in 1904 and of one by the United States, Russia appointed a commission to consider the question of contraband, and in October, 1904, announced her conclusion in a memorandum which, as amended the following day, noted that rice and foodstuffs, among other articles

shall be considered contraband of war if they are destined for the government of a belligerent power; for its administration; for its army; for its navy; for its fortresses, or for its purveyors. *In cases where they are addressed to private individuals these articles shall not be considered as contraband of war.*

This left the merchants of England and the United States free to send foodstuffs to the civilian population of Japan without risk of confiscation by Russian warships.

It cannot be controverted as the well established law of all the nations that absolute contraband, if destined to one of the countries at war, may be seized by the other belligerent power; but conditional contraband is not liable to seizure or confiscation unless it is destined—as its shippers declared was not the case of the Wilhelmina's cargo—for consumption by the army, navy or other governmental departments of any belligerent power.

This doctrine of international law not only recognizes the rights of citizens of neutral countries, but is based upon the broader and more humane premise that one power has no right to wage war upon the non-combatant population of its opponent.

The authorized representatives of the great powers in the Declaration of London reaffirmed in 1909 their adherence to these principles. In a debate upon the Declaration of London in the House of Commons Sir Edward Grey, Secretary of State for Foreign Affairs, said that the British government would issue a statement to the effect that in order to be subject to confiscation the ultimate destination of conditional contraband must be to the "government of the enemy" and not merely to merchants of the enemy's state. Although the Declaration of London was never formally ratified by all the governments, its effect unquestionably is to indicate the general understanding of the various provisions of internation law set forth therein.

In the Boer war Lord Salisbury then Under Secretary for Foreign Affairs, laid down the position of the British government as follows:

Foodstuffs with a hostile destination can be considered contraband of war only if they are supplied for the enemy's forces. It is not sufficient that they are capable of being so used; it must be shown that this was in fact their destination at the time of their seizure.

The American government, in its friendly communication to Great Britain late in December, 1914, setting forth the views of this government in opposition to British interference with American trade in conditional contraband to neutral ports, quoted this statement of Lord Salisbury, and declared the American government to be in entire accord with this view, adding:

"and upon this historic doctrine, consistently maintained by Great Britain when a belligerent as well as a neutral, the American shippers are entitled to rely."

The Wilhelmina's cargo was consigned not to a neutral port, but to Hamburg, the port of a power hostile to Great Britain; and the British government in preparing its preliminary reply to the American communication apparently foresaw the circumstances since brought up by a voyage such as that of the Wilhelmina, for the British reply contained this significant paragraph:

"With regard to the seizure of foodstuffs, to which your excellency refers, his majesty's government are prepared to admit that foodstuffs should not be detained and put into a prize court without the presumption that they are intended for the armed forces of the enemy or the enemy government. We believe that this rule has been adhered to in practice hitherto, but if the United States government have instances to the contrary we are prepared to examine them; *and it is our present intention to adhere to the rule, though we cannot give an unlimited and unconditional undertaking, in view of the departure of those against whom we are fighting from hitherto accepted rules of humanity and the uncertainty as to the extent to which such rules may be violated by them in future.*"

This paragraph, regarded, unofficially at least, in Washington as intimating that in England's opinion exceptional conditions might arise which would make it necessary for her to retaliate against Germany, indicates that Great Britain then had in mind certain reservations probably not intended to be specified until after American merchants ventured upon an endeavor to supply Germany's civilian population with food.

The foregoing citations from the writings of Lord Lansdowne, Lord Salisbury and Sir Edward Grey—establishing their country's position under international law—are the pregnant parts of the brief which the American State Department is in a position to prepare as a protest against a determination by England now to alter this position.

Washington news dispatches on the day following that of the Wilhelmina's departure hinted that administration officials did not share the avowed confidence of many exporters that Great Britain would refrain from confiscating such cargoes consigned to Germany.

Secretary Bryan, in a letter written two days before the Wilhelmina departed from New York to Chairman Stone of the Senate Foreign Relations Committee, defending the neutrality of the United States in the European war, said he would regard as "premature and unwarranted" any criticism of the policy of the State Department toward the confiscation by Great Britain of an American vessel with a belligerent destination and trading in conditional contraband such as foodstuffs. Early in January Secretary Bryan had declined in a telegram to the charterers of the Wilhelmina to outline what course the State Department would pursue in the event of seizure and confiscation by British warships of a cargo such as that sent on this vessel.

AN "ABOUT FACE" MOVEMENT IN INTERNATIONAL LAW.

The British Foreign Office in its statement of February 4, to the effect that no decision "has yet been taken to depart from previously accepted rules or practice," declared further that "the apparent intention" of the German government to sink merchant vessels by submarines had

"raised very seriously the question whether Great Britain should adopt in retaliation more stringent measures against German trade."

This was generally regarded in Washington as forecasting England's purpose to prevent foodstuffs exported by neutrals, including the United States, from reaching Germany's non-combatants.

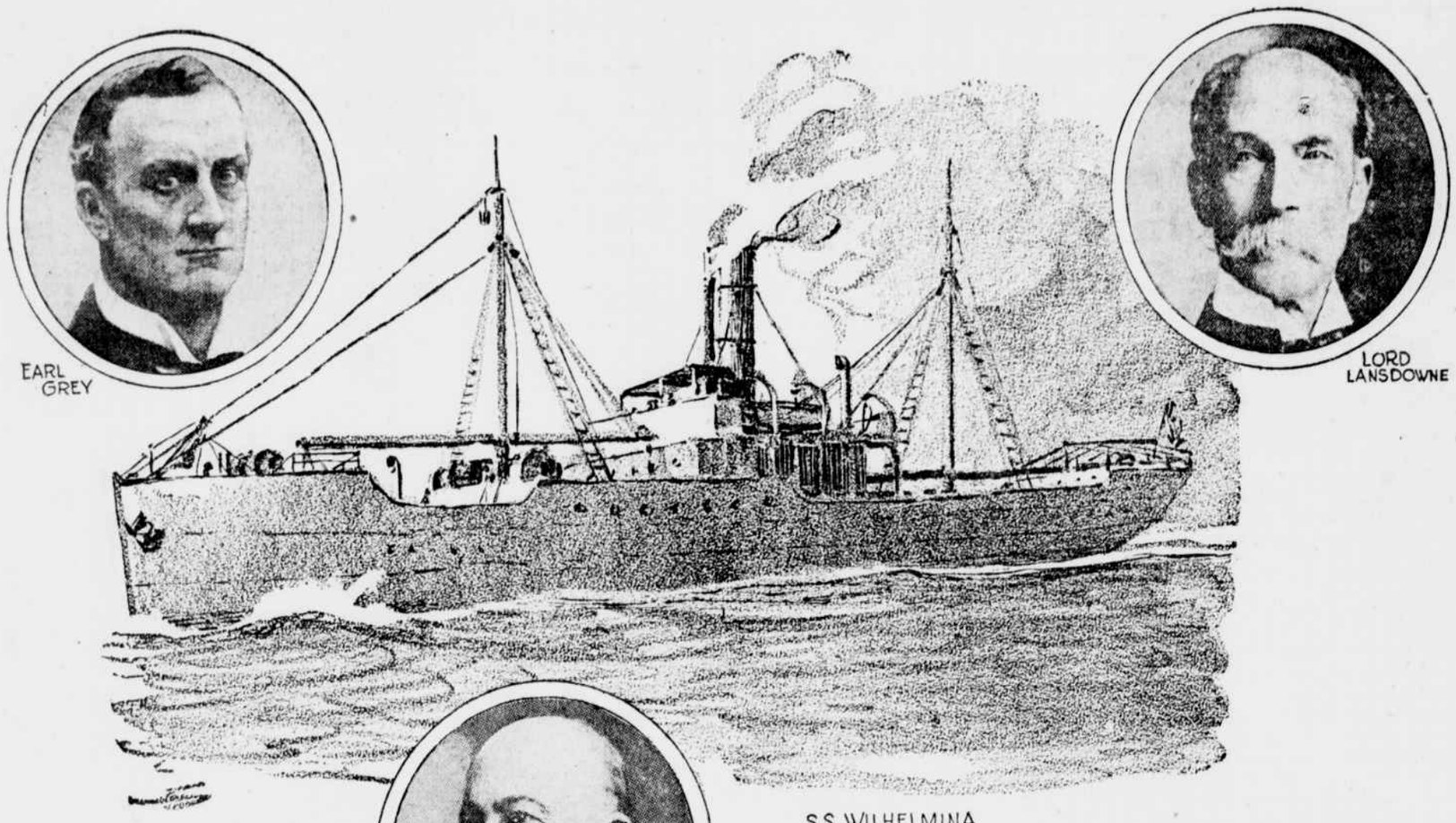
Germany, on February 6, indicated that her attitude toward this heretofore recognized right of neutrals would in the present great conflict be determined by the position taken by Great Britain. Germany, said a statement issued by the German Embassy in Washington on that date:

"does not intend to molest or seize American vessels laden with foodstuffs for the civilian population of enemy countries; it is to be hoped that England will not make necessary a reconsideration of this attitude by seizing American ships like the Wilhelmina."

A few days later the storm-beaten Wilhelmina put in at Falmouth, an English port, for safety, and on February 13 Count von Bernstorff informed Secretary Bryan at a conference that if Great Britain purposed to attempt to starve the civilian population of his country, Germany would retaliate by endeavoring similarly to cut off her enemy's commerce.

On this same day, February 13, dispatches from London indicated England's apparent hesitation to throw the Wilhelmina's cargo into a prize court; but Washington officials predicted that even if Britain decided not to seize this cargo as absolute contraband in violation of her own established precedents in international law and decided instead to allow the cargo to be purchased by the Commission for Relief in Belgium, the problem remained unsettled and would again arise when another American exporter made an effort, as the Wilhelmina's charterers had done, to send food to German non-combatants.

In the bitterness of nations has been dipped the pen which is rewriting international law.



FOUND GRAVE OF MARGARET CORBIN, THE HEROINE OF FORT WASHINGTON

By ARTHUR P. ABBOTT.

While gathering material for a book the writer discovered the facts brought out in this article. Efforts are now being made to have a suitable memorial erected through the help of the American Scenic and Historic Preservation Society.

I STOOD one hazy, dreamy day in the midsummer of 1913 on the summit of one of those numerous hills which compose the delectable region known as the Hudson River Highlands.

Away in the distance a range of hills silhouetted their summits against the sky, while at their feet the tide of the Hudson went sweeping on its way to the ocean.

The charm of the scene and the bewitching calm gradually drew me into the realm of fancy and I saw the armies of Washington again negotiating the highland passes or defending fortifications found on nearly every hilltop. An object moving along the skyline again became the Harvey Birch of Cooper's fiction. The castled turrets of homes of New York City millionaires became again the ancient manor houses whose inmates were those stately lords and ladies of pre-Revolutionary days.

I was conscious of the fact that I was looking upon a stage the scenic settings of which were the same as when the greatest drama of the ages was played upon it. The actors only had changed. And while the star in that immortal drama lay peacefully sleeping beside the tranquil waters of the Potomac, many of his trusted and faithful supporters—those who had played leading parts and others who had belonged only to the great chorus—lay about me in humble graves, many of which were unmarked and unknown.

Wrapped in these meditations, I failed to observe, till nearly upon me, an approaching figure which, owing partly to my thoughts and as much to his appearance, I took to be Harvey Birch trudging along his lonely way without his pack. But upon closer observation I recognized him to be a well-known character called by all Uncle Jerry. He was a person who stood only one generation removed from the scenes I had just been contemplating and who was born and who had lived nearly all his days in the locality. Here was just the person I most needed at the moment. He no doubt could tell me many things of interest. His threescore years and ten had passed and another score were nearing completion. So I hailed him and began plying him with questions. I soon found, however, that I had come too late. His memory had faded till its walls were almost bare.

After considerable prompting he managed to name several of those of the old days and to disclose, with reasonable accuracy, the location of their graves. Among those he mentioned was Molly Pitcher. "Molly Pitcher!" I repeated, "is she, too, buried here?" "Yes; over on yonder hillside, along the shore of the Hudson." I then tried to dig deeper, but it was no use. Finally, he said: "See Captain Faurot; he still remembers, and can tell you what you want to know." At this he hurried on his way with a step which belied his years, and was soon lost to view around a bend in the road.

CONSULTING THE NOTEBOOK, AND, LATER, CAPTAIN FAUROT.

"Molly Pitcher," I again repeated to myself. Then, taking from my pocket my field notebook, I read, to assure myself:

Inscription on monument at Carlisle, Penn.

MOLLY McCAULEY.
Renowned in History as Molly Pitcher.
The Heroine of the Battle of Monmouth.
Died January, 1833, aged 79.

Erected by the citizens of Cumberland County, July 4, 1876.

These and other notes convinced me that Uncle Jerry was in error or else there were two Molly Pitchers! However, this bit of information was interesting and worth investigation. First I must see Captain Faurot.

The captain was easily found, as I discovered he was the local authority on things historical. I found him, like Uncle Jerry, a man past his allotted threescore years and ten, but, fortunately, in possession of a good memory, fortified with a liberal education and a library of choice volumes. Upon my announcing the object of my visit, he readily replied: "Yes; Molly Pitcher is buried here in the Highlands, and my grandfather helped bury her." The captain, being a man of very positive views, and not thinking it profitable to spend the valuable time in debate, I did not express my doubts, but plied him with questions regarding this Molly Pitcher.

He told me many interesting details in her life among the dwellers of the Highlands. Of her characteristics, habits and especially of her shortcomings. She was an Irish woman, with a characteristically sharp tongue and quick temper. Not always particular of her dress or person, yet commanding and haughty; that, while she was called "Dirty Kate" by those who had incurred her displeasure or experienced her wrath, she was invariably saluted as Captain Molly when face to face. That, in spite of all the hard things said about her, her favor was held in high esteem by all. Her grave had never been marked otherwise than by a cedar tree which grew beside it, and which in later years had been cut down, but the stump still remained. His father had taken him to her grave, and, pointing to it, had said: "Your grandfather brought me here, as I have you, and, pointing out her grave, told me it was here we buried Molly Pitcher." That he had recently marked the grave with a small wooden stave on which he had placed the letters M. P.

All this was so interesting that I felt I must learn more of this Captain Molly. So, after thanking the captain for the interesting and valuable information he had given me, and securing his promise to give me another interview at a later date, I left him, and was more deeply mystified than ever.

I then thought of my friend, the late Dr. Holden, the venerable librarian of West Point's valuable and interesting library. I was convinced the doctor would surely unravel the mystery for me. Upon calling his attention to the matter, he somewhat irritably informed me that the woman buried down in the hills was "an old fraud," and the "old roosters," as he termed my earlier informants, were utterly unreliable. He then proceeded to show me by reputable authorities where Molly Pitcher was buried, etc. As this information was not new to me, it did not interest me further than the tendency it had to obscure the answer to the question, Who was Captain Molly of the Highlands? On this point the good doctor could give me no light. However, after considerable questioning, he suddenly remembered that there was an old copybook of letters in the library which might interest me. This, upon being produced, proved to be copies of letters in the handwriting of William Price, quartermaster at West Point during the period following the close of the Revolutionary War, and written to Secretary of War Knox. In these letters he made frequent mention of Captain Molly, as he called her, all of which referred to her need of clothing, boarding-house, etc. In fact, he seemed to be her especial guardian and her every need and wish was his utmost concern. But why this was so the doctor could not tell me. And here the doctor's charge that she was "an old fraud" seemed to fail of proof. So I found the mystery to deepen in the place of being unravelled.

In my conversation with the doctor he mentioned a family who claimed to have the personal effects of Captain Molly, purchased at the public vendue held after her death, as was the custom in those days when a person died without friends or heirs. This being a promising lead, I called, and was shown a flax reel, spinning wheel, andirons and several other interesting articles. While all this was interesting, it still threw no light on the perplexing question, "Who was Captain Molly of the Highlands?"

After visiting her grave and making sure of its location, I seemed to come to the end of the road so far as local information could lead me. My next thought was to appeal to the War or Pension departments at Washington. This I did, with the result that I was informed that the records I needed were destroyed in 1812, when the British burned our capital. The department referred me to the military records of the State of New York. That department considerately referred me to the War and Pension departments after telling me they had no record. So here I found myself, like Christian, imprisoned in Doubting Castle, with but little prospect of escape.

KEEPING UP WITH MOLLY; BY ANALOGY, SO TO SPEAK.

After remaining in this state for some time, the thought occurred to me to search for names of persons known to historians, and which would correspond with the information I had gathered relative to this mysterious Captain Molly. This, after some search, proved to be a valuable lead. For the name of Margaret Corbin filled every requirement. There were several reasons for this. She was an Irish woman; she was the first woman pensioned by our government for heroic deeds; she had been a ward of the government; her deed was common knowledge, and for it she was held in high esteem by those who were in sympathy with our cause.

Margaret Corbin was born in Franklin County, Pennsylvania, November 12, 1751. She was the only daughter of Robert Cochran, who was killed by the Indians in 1756, his wife, Margaret's mother, being taken into captivity by the Indians at the same time, Margaret being at the time only five years of age. The reason she escaped was that she and her brother were visiting an uncle, brother of her mother. This uncle raised Margaret, who in 1772 married a Virginian by the name of John Corbin. John Corbin enlisted in the 1st Company, Pennsylvania Artillery, under Captain Francis Proctor. His wife, Margaret, having no children or other home ties, did what many other noble women of that day did, followed her husband to war and offered her services as a nurse and aid in camp life.

John Corbin was killed at the battle of Fort Washington November 16, 1776, and when he fell Margaret took his place at his gun and served it with great credit till struck down with three grapeshot, which nearly severed her arm and a part of her breast. At the surrender she was paroled to General Greene, across the river at Fort Lee, and was carried, with other sick and wounded, to Philadelphia. Here later she was formally enrolled as a member of the "Invalid Regiment," the history of which is most interesting, but which space will not permit giving here. An interesting item in this connection is that Mary Ludwig, the real "Molly Pitcher," married John Hayes, who was a gunner in the same regiment as John Corbin, which no doubt made her acquainted with Margaret Corbin. And it no doubt was Margaret Corbin's deed at Fort Washington that inspired the act of Mary Ludwig, or "Molly Pitcher," at the battle of Monmouth, and which placed her name in the book of immortality.

So grievous were the wounds received by Margaret Corbin at Fort Washington that they were ultimately the cause of her death, and not, as Lossing would have us believe, by a loathesome and dishonorable disease. On account of these wounds, the Supreme Council of Philadelphia, on June 29, 1779, granted her $30 and recommended her to the Board of War for a regular pension, which that body granted her, July 6, 1779.

When the Invalid Regiment was mustered out in April, 1783, Margaret, having no home to go to or hospital to receive her, turned her thoughts to the Hudson River, where her husband had laid down his life, and where, owing to the disbanding of the greatest number of soldiers, she could find the largest number of sympathetic friends. Here she found a quiet refuge, aided by the poor but grateful country on whose altar she had laid her all. She died about 1800, and, as we have already shown, was laid to rest among the hills she loved and graves of those who loved and honored her.